THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.15034, 15035 and 15039 of 2014

COMMON ORDER

Heard learned counsel for the petitioners, Sri D. Bhaskar Reddy, learned counsel for the 1st respondent, Sri D. Sudarshan Reddy and Sri Polisetti Radha Krishna, learned counsel for 4th respondent in W.P.Nos.15034 and 15035 of 2014 and 3rd respondent in W.P.No.15039 of 2014 apart from the learned Government Pleader for Municipal Administration, Government of Telangana for 5th respondent in W.P.Nos.15034 and 15035 of 2014 and 4th respondent in W.P.No.15039 of 2014.

2. The grievance of the petitioners in these writ petitions is that the non-official respondents are having three children by the date of holding of elections for the posts of Ward Councilor of the 1st respondent Municipality; that the non-official respondents ought not to have been permitted to contest the elections as Councilors for the 1st respondent Municipality since they are disqualified under Section 13-B of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act'); and in spite of representations being made by the respective petitioners against the non-official respondents in each of the writ petitions, to the Commissioner of Kamareddy Municipality, no action has been initiated by the said official although he is obligated to take action under Section 17 of the Act.

3. Learned Government Pleader for Municipal Administration

and Urban Development Department appearing for the Government of Telangana has filed a counter affidavit setting out the provisions of the Constitution and the Act (which are extracted) and they taken a stand that the remedy of the petitioners is only to approach the Election Tribunal by filing an election petition.

4. Learned senior counsel Sri D. Sudarshan Reddy, representing the non-official respondents, contends that the allegations made against the non-official respondents by the petitioners are not true; that they have been elected as Councilors for different wards of the 1st respondent Municipality; and the writ petitioners ought to have filed an election petition as mandated under Section 343-ZA of the Act or they can approach the concerned District Court under Section 17-1(a) of the Act.

5. I have noted the submissions of the respective parties. Section 17 of the Act provides for adjudication of question of disqualification of Members/Councilors of the Municipality, who incurred disqualifications specified under Sections 13, 13-A, 13-B, 14,15,16 and 19 of the Act. Section 17 of the Act states as under;

> **"District Judge to decide questions of disqualifications of members:-** 1) Where an allegation is made by any voter or authority to the Commissioner in writing that any person who is elected a member has not qualified or has become disqualified under
> (Section 13, Section 13-A, Section 13-B), Section 14, Section 15, Section 16 or Section 19 and the Commissioner has given intimation of such allegation to the member and such member disputes the correctness of the allegation so made or where any member himself

entertains any doubt whether or not he has become disqualified under any of those sections.

(a) such member or any other member may, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, and

(b) the Commissioner shall, either on the direction of the council or with the approval of the Government if no such direction is given within a period of two months from the date of placing of the matter by the Commissioner before the council, apply for a decision to the District Judge of the district in which the municipality is situated.

(2) The said Judge, after making such inquiry as he deems necessary, shall determine whether or not such person is disqualified and his decision shall be final.

(3) Pending such decision, the member shall be entitled to act as if he was not disqualified".

Apart from the remedy provided in Section 17-1(a) of the Act of approaching the District Judge in the District in which the Municipality is situated and filing an election petition as provided in Section 343-ZA of the Act, the above provision also gives option to petitioners to file a complaint to the Commissioner of the Municipality alleging that the elected members have incurred disqualifications under the above provisions; and if such a complaint is made to the Commissioner, he is required to give intimation of such allegation to the Members/Councilors concerned; and in the event, the latter dispute the correctness of the allegation made, it is incumbent on the Commissioner to place the matter before the Municipal Council for a decision and if directed by Council or if there is no such direction, with approval of Government apply to the District Judge for a decision as provided in Clause (b) of Sub-section 1 of Section 17.

6. Sri D. Bhaskar Reddy, learned counsel appearing for the 1st respondent states that the petitioners may as well approach the District Judge under Section 17-1(a) of the Act.

7. I do not agree with the said submission. The petitioners have a choice either to (i) file an election petition under Section 343-ZA or (ii) directly approach the District Court under Section 17-1(a) of the Act or (iii) to approach the Commissioner under Section 17-1(b) of the Act. It is the choice of the petitioners to choose one of these options and they cannot be compelled to choose any particular option at the instance of the respondents. The Commissioner cannot abdicate the responsibility conferred upon him under Section 17-1(b) of the Act and decline to give intimation of the allegation made against the Councilor to the said Councilor or place the matter before the Municipal Council.

8. Therefore, the Writ Petitions are allowed directing the Commissioner of Kamareddy Municipality to act as indicated above strictly in accordance with Section 17 of the Act within two weeks from the date of receipt of a copy of this order and communicate the action taken by him to the respective writ petitioners and non-official respondents. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

_____

M.S.RAMACHANDRA RAO, J

2nd September, 2014

Note:
Issue CC in three days.
(Bo)
sj